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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,220	03/23/2001	Hideharu Takezawa	10059-371US	2883

570 7590 12/18/2002

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.  
ONE COMMERCE SQUARE, SUITE 2200  
2005 MARKET STREET  
PHILADELPHIA, PA 19103

EXAMINER	
TSANG FOSTER, SUSY N	
ART UNIT	PAPER NUMBER

1745

6

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/762,220	TAKEZAWA ET AL.	
	Examiner	Art Unit	
	Susy N Tsang-Foster	1745	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 23 March 2001.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-8 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-8 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> .	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Information Disclosure Statement***

2. The information disclosure statement filed on 2/2/2001 has been considered by the Examiner.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 2, the limitation “wherein at least two selected from the group consisting of R<sup>1a</sup>, R<sup>2a</sup> and R<sup>3a</sup> are identical with each other in said general formula (1), and/or R<sup>1b</sup> and R<sup>2b</sup> are identical with each other in said general formula (2)” is indefinite because it is unclear which phosphates are selected to be present in the electrolyte and what the relationship is between the selected phosphate or phosphates and the sameness of the R groups; and it is unclear how this limitation further limits claim 1.

In claim 4, the limitation “wherein the percentage by volume of each of said phosphates in said mixture is not less than 30%” is indefinite because it is unclear what the volume is based on. It is also unclear because if there are more than three phosphate in the mixture then the percentage would be greater than or equal to 120% by volume.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by EP 917224 A1.

See abstract; paragraphs 1, 8, 10, 13, 15, 19, 27, and 33 and especially paragraph 24 of the reference.

7. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by JP 10-255839 A (JPO Machine Translation).

See paragraphs 6-9 of the JPO Machine translation of the reference.

8. Claims 1-8 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by JP 11-233140 A (JPO abstract 1999).

See JPO abstract of the reference.

9. Claims 1-8 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Gan et al. (US 6,068,950).

See abstract; col. 2, lines 46-55; col. 6, lines 44-65; and col. 7, lines 21-40 of the reference.

10. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by JP 09-223516 A (JPO website machine translation).

See claims 1 and 3; paragraphs 6, 14, 15, and 53 of machine translation of reference.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kita (US 5,691,084) discloses a triester of phosphoric acid of the formula  $(R'O)_3P=O$  wherein three R' groups are the same or different and R' is an alkyl group having 1 to 6 carbon atoms added to the solvent of the electrolyte solution of a nonaqueous secondary battery (col. 2, lines 10-36).

Art Unit: 1745

12. Any inquiry concerning this communication or earlier communications should be directed to examiner Susy Tsang-Foster, Ph.D. whose telephone number is (703) 305-0588. The examiner can normally be reached on Monday through Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached at (703) 308-2383. The phone number for the organization where this application or proceeding is assigned is (703) 305-5900.

The fax phone numbers for the organization where this application or proceeding is assigned is (703) 872-9310 for regular communications and (703) 872-9311 for After-Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

st/15 December 2002

*Susy Tsang-Foster*